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Postsecondary Transition Services:
IDEA Rules, Arizona Guidance, and Legal Trends

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Overview & Learning Objectives

- **The IDEA.** Gain an understanding of the IDEA's legal requirements for secondary transition.
- **Arizona Guidance.** Learn how Arizona has implemented these requirements and how national agencies are monitoring outcomes.
- **Case Law.** Learn how both Federal Courts and State Administrative Agencies have decided recent secondary transition cases.
- **Best Practices for Compliance.** How should your district address secondary transition?

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The IDEA 2004

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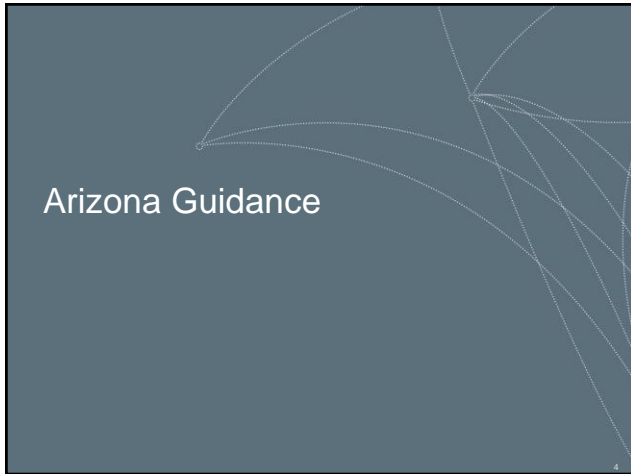
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IDEA 2004: Transition Requirements

1. Transition plans must be included in all IEPs, beginning no later than the first IEP to be in effect when the child is 16, or younger if determined appropriate by the IEP team.
2. Transition plans must be updated annually.
3. The LEA must invite children and involved outside agencies to any IEP team meetings considering postsecondary goals.
4. IEP Transition Plans must include:
 - Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
 - The courses of study and transition services needed to assist the child in reaching these goals; and
 - Notice of rights following age of majority.

34 C.F.R. § 300.320-300.321, 20 U.S.C. § 1414 (d)(1)(A)(i)(VIII)-(d)(1)(B).

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Special Education and Transition in Arizona

- The Arizona State Board of Education fully incorporates the IDEA for all matters related to secondary transitions. ARIZ. ADMIN. CODE § R7-2-401.
- Special Education is administered by the Arizona Department of Education (ADE) through the office for Exceptional Student Services (ESS).
- No recent secondary transition cases have been decided in Arizona. However, because Arizona incorporates the IDEA, lessons from other districts and State Departments of Education are applicable.

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ADE Transition Planning Guidance

- Several resources are available on the ADE website:
 - Assessment and IEP development tools
 - Post-School Outcomes data collection tools (www.psocenter.org)
 - National Secondary Transition Technical Assistance Center (NSTTAC) resources for transition assessment and planning. (www.nsttac.org)
 - Arizona Monitoring Manual with case examples and sample forms
 - Career assessment resources

<http://www.ade.az.gov/ess/>

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ADE Transition Plan Requirements:

Beginning no later than the first IEP to be in effect when the child is 16, the following components must be included in the IEP and must be updated annually thereafter:

- Student Invitation
- Measurable Postsecondary Goal(s), updated annually
- Age-appropriate transition assessments
- Coordinated set of activities
- Courses of study
- Outside agency invitation with prior consent
- Annual IEP goal(s)
- Transfer of Rights
- Summary of Performance

<http://www.ade.az.gov/ess/SpecialProjects/transition/>

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Indicator 13

- The U.S. Department of Education, through the Office of Special Education Programs (OSEP) requires states to comply with performance plans around 20 indicators.
- Indicator 13 is the percent of youth aged 16 and above with an IEP that will reasonably enable the child to meet postsecondary goals.
- Arizona uses the NSTTAC checklist to collect Indicator 13 data. NSTTAC information is available at: www.nsttac.org/indicator13/indicator13.aspx.

2009 ADE Special Education Monitoring Alert

According to guidance from OSEP, the following 8 factors are included in file reviews during monitoring and will have an impact on FAPE if there is an issue of noncompliance:

1. Appropriate, measurable postsecondary goals
2. Goals are updated annually
3. Goals are based on age appropriate transition assessments
4. Transition services reasonably enable student to meet postsecondary goals
5. Transition services include course of study enabling student to meet postsecondary goals
6. Annual IEP goals relate to transition services needs
7. Evidence that student was invited to IEP meeting when transition was discussed
8. Evidence that a representative of any participating outside agency was invited to IEP meeting with prior consent (if relevant)

Any finding of noncompliance must be corrected within 60 calendar days of written notification.

Recent Federal Decisions

Recent Federal Decisions

Virginia S. v. Dept. of Educ., 47 IDELR 42 (D. Haw. 2007)

A School District developed a generic transition plan for a student. The plan was not individualized and did not take into account the child's needs, strengths, preferences, and interests. The plan listed the student's goals as graduating from high school, attending a university or community college, and employment in the community. The plan did contain measurable goals and objectives, and the parent's opinion was considered when deciding the student's placement.

The Court held:

- Even though the student's transition plan was so generic that it could have applied to almost any other student, the District did not violate the IDEA.
- The generic transition plan was a harmless error because the student was still receiving adequate educational benefits from the plan. The student would still have the opportunity to receive assistance with college planning and the opportunity to explore career options.

Recent Federal Decisions (Con't.)

Board of Educ. of Twp. High Sch. Dist. No. 211 v. Ross, 47 IDELR 241 (7th Cir. 2007)

A School District was in the practice of deferring transition plans until students were ready to move along, and in this case, a student was repeatedly deferred. The student was placed in a special program for her junior year and was not mainstreamed with general education students. Her parents alleged that she was denied FAPE in a least restrictive environment.

The Court held:

- The District's failure to include a specific transition plan in the student's IEP did not result in a denial of FAPE.
- The District committed a procedural error by failing to include specific transition plans, but because the student was not in a position to benefit from an elaborate plan, this did not result in a denial of FAPE.
- It is acceptable for a district to defer transition planning when a student is not in a position to benefit from an elaborate plan.

Recent Federal Decisions (Con't.)

Sinian L. v. Sch. Dist. of Phila., 109 LRP 59299 (3d Cir. 2008)

The parents of a child alleged that a School District denied their child FAPE because his IEP lacked sufficient detail. They rejected the IEP, enrolled their child in a private boarding school, and requested reimbursement for tuition. A team of teachers, clinicians, and experts from the school district had drafted the student's IEP. The IEP contained a mostly blank transition plan, stating only that the student would meet with counselors to discuss college prerequisites and opportunities.

The Court held:

- Tuition reimbursement is only available under the IDEA if an IEP fails to offer a student FAPE and the parent's chosen alternative is appropriate for the student.
- Failing to place the child in a residential program was not a denial of FAPE.
- The IDEA only requires functional and vocational planning when appropriate. There is no duty to provide functional and vocational training in all transition plans if a student's individual preferences indicate other goals.
- It was appropriate for the student's IEP to focus on college planning because the parents had rejected a vocational outcome.

Recent Federal Decisions (Con't.)

K.C. v. Mansfield, 52 IDELR 103 (N.D. Tex. 2009)

A child's transition plan reflected interests in fashion and child care, but her parents sued for failure to provide FAPE because the plan did not address her interest in music. The parents requested tuition reimbursement and believed the IDEA guaranteed successful outcomes. The School District administered several assessments, including a "Full and Individual Evaluation" to determine adult living objectives and daily living skills. The student's IEP also included work in a clothing store and music classroom, and included practical goals focused on developing a weekly budget, balancing a checking account, conversational skills, and meal preparation.

The Court held:

- The IDEA does not require states to guarantee any particular educational outcome, but just requires the provision of resources required to assist a child in gaining some benefit from special education.
- The student's transition plan was reasonably calculated to provide FAPE because it reflected the student's skills and interests, included practical goals that would help the student transition after high school, and considered several individuals assessments.

Recent Federal Decisions (Con't.)

Rosinsky v. Green Bay Sch. Dist., 53 IDELR 193 (E.D. Wis. 2009)

Parents contested the validity of their child's transition plan, alleging that it was too vague and that the School District did not invite agency representatives to all of the IEP meetings. The IEP included a suggested course of study, employment, post-school adult living, daily living, community experiences, functional vocational assessment, and related services with postsecondary goals. It also called for community work experience, involvement in daily living and recreational activities, and vocational experience. Although they were not invited by the District, representatives attended the meeting because the parents invited them.

The Court held:

- The student's transition plan was appropriate because it contained measurable postsecondary goals and the student was making progress.
- Because the District supplied an appropriate transition plan, it provided FAPE.
- Failure to invite agency representatives to IEP meetings was a procedural violation, but because the agents ended up attending the meetings, any procedural violation by the District was harmless.

Recent Federal Decisions (Con't.)

High v. Exeter Twp. Sch. Dist., 54 IDELR 17 (E.D. Pa. 2010)

A high school junior with learning disabilities wanted to go to college, but her IEP contained a goal calling for her to read at a sixth-grade level. Her transition plan focused on college preparation, placement tests, and attendance at college fairs. The District also provided several meetings with a transition counselor, an internship in the school's life services room, and a job-shadowing day. The student's parents rejected the IEP, alleging that her reading goal did not align with her transition plan.

The Court held:

- This student's sixth-grade level reading goal was reasonable in light of her severe learning disability.
- The IDEA does not require a student's transition plan to dictate IEP goals.
- Because the student made meaningful academic progress despite her learning deficits, her IEP was appropriate.
- The IDEA does not guarantee specific outcomes, but rather provides a basic level of educational opportunity.

Recent Federal Decisions (Con't.)

C.B. v. Pittsford Cent. Sch. Dist., 54 IDELR 149 (W.D.N.Y. 2010)

A student had deficits in written expression but did not consistently use his assistive technology out of self-consciousness. The transition portions of his IEP included participation in a career inventory assessment, completion of an online survey to assess areas of interest, exploration of job shadowing, and role playing. It also addressed his plan to eventually attend college. His parents alleged that the District failed to address his inconsistent use of assistive technology and failed to provide an appropriate transition plan.

The Court held:

- If an IEP is reasonably calculated to provide an education benefit, a child has not been denied FAPE.
- The student's IEP contained an appropriate transition plan that "included a detailed coordinated set of transition activities to facilitate the student's movement from school to post-school activities."
- The student's difficulties with his assistive technology were not due to a lack of teacher support or other educational deficit. The student chose not to use the assistive technology and the District was not liable for his lack of compliance.

Recent Federal Decisions (Con't.)

Dracut v. Bureau of Special Educ. Appeals, 55 IDELR 66 (D. Mass. 2010)

A student had pragmatic language deficits related to Asperger syndrome. His school provided a two-day vocational assessment followed by a wellness internship, banking internship, and computer internship. The school also recommended that the student pursue part-time or volunteer employment and opportunities out of school. A "transition planning chart" was included in an IEP and listed various desired outcomes, action plans, and bench marks in four areas. The child's parent rejected all of the IEPs and sought compensatory education from the district.

The Court held:

- IEP procedural and substantive deficiencies constituted a denial of FAPE.
- The IEPs were not reasonably calculated to provide a meaningful benefit in pragmatic language skills, a central component of the student's disability.
- The District failed to provide meaningful assessments and measurable goals developed according to the child's employment or independent living needs.
- The student had made some meaningful progress in behavioral, social, and organizational skills.

The District was ordered to provide compensatory transition services for two years.

Recent Federal Decisions (Con't.)

Klein Indep. Sch. Dist v. Hovem, 55 IDELR 92 (S.D. Tex. 2010)

A child's academic weaknesses became apparent towards the end of high school and his parents expressed frustration that he was not prepared for college. The student's school did not offer a solution. The parents then placed their child in private school and sought reimbursement from the School District, alleging a denial of FAPE. The student's transition plan contained general information, did not specify goals or activities for improving academic and functional achievements, and did not address the student's severe deficiencies in written expression. The student's transition plans were also unchanged for three years and disregarded his educational and vocational interests.

The Court held:

- The District violated the IDEA and failed to provide the student with FAPE.
- Continuous failure to implement an individualized transition plan in the IEP was a procedural violation of the IDEA that amounted to a denial of FAPE.
- The student had made meaningful progress in his private residential facility, but did not progress while at the public school.

The District was ordered to reimburse the family for two years of past educational expenses and for any future educational expenses at the student's chosen private residential educational facility. Residential expenses were not covered.

Recent Federal Decisions (Con't.)

Rodriguez v. Fort Lee Bd. of Educ., 111 LRP 9524 (D.N.J. 2011)

A father of a child alleged that his daughter was denied FAPE because of procedural defects in her IEP, including not having an individually designed transition plan. The school provided the parents with information about transition planning agencies, completed a twelfth-grade "senior year checklist," assembled contact information of additional resources, created a social skills class for the child, and assembled a group of peers to help the child foster interpersonal skills and "street smarts." However, the father thought the IEP was not individually designed because necessary agencies did not attend transition meetings.

The Court held:

- Even though the child's transition planning goals were vague and necessary agencies were not invited to meetings, the school district did not violate the IDEA because it supplied the student and her parents with substantial information and assistance tailored to the unique needs of the student.
- Failure to invite appropriate agencies to the transition meetings only constituted a procedural violation.
- The procedural violations in this case did not amount to a substantive deprivation of the child's right to FAPE or her parent's right to an opportunity to participate in the decision making process.

Recent Federal Decisions (Con't.)

School Dist. of Phila. v. Deborah A., 111 LRP 25598 (3d Cir. 2011)

The parents of a child sought compensatory education after a School District failed to provide the child with appropriate transition evaluations. The IEP outlined transition goals, including development of a plan for life after high school, but failed to directly address the student's individual behavioral and learning issues. For example, the IEP called for fluency and comprehension in "grade-appropriate" reading, but then failed to define "grade-appropriate" for the student.

The Third Circuit affirmed the lower court decision holding that:

- The child's IEP was too general, "quite sketchy and wholly unhelpful," and failed to focus on the student's reading and behavioral issues.
- The District denied the student FAPE by supplying an inadequate IEP.

The District was ordered to provide 5.5 hours of compensatory education for every school day in the 2006-2007 school year.

Recent Agency Decisions

Recent Agency Decisions

Monrovia Unified Sch. Dist., 108 LRP 40496 (SEA CA 2008)

A student alleged that his School District failed to establish an adequate transition plan because it included unrealistic career goals. The plan was based on an occupational interest assessment and a simple one-page "fill in the blanks" form. It identified the student's general career interests and goals, but did not identify any transition services.

The Agency held:

- Because the District failed to offer a transition plan that afforded a meaningful educational benefit to the student, the student was denied FAPE.
- If a transition plan does not relate to the results of assessments or the goals listed in a transition plan, it may result in a denial of FAPE.
- Without actual transition services, a transition plan cannot contain coordinated activities to promote movement from school to post school activities.

The District was ordered to provide reimbursement for approximately one year of compensatory private school education, comprehensive assessments, and removal of failing grades from the student's records.

Recent Agency Decisions (Con't.)

Natick Pub. Sch., 54 IDELR 109 (SEA MA 2010)

A student left high school with a strong interest in sports and broadcasting but had never undergone a comprehensive assessment of his vocational interests and skills. His School District had just implemented a new transition program but the program did not offer appropriate academic instruction and social opportunities for independent life. The student's parent rejected the program and placed the student in a private program. The parent then sought reimbursement for the cost of education.

The Agency held:

- The newly implemented transition program denied the student FAPE because it overlooked the student's individual needs, strengths, preferences, and interests.
- Because the parent's placement met the student's needs, it was appropriate.

The District was ordered to reimburse the parents for two years of outside educational placement for the student.

Recent Agency Decisions (Con't.)

Antelope Valley Union High Sch. Dist., 110 LRP 33085 (SEA CA 2010)

A student's transition plan provided vocational guidance and career-interest testing, including a computer-based program that administered questionnaires and provided information regarding 40 different careers. The student also participated in a highly structured class that partnered with businesses and organizations to give students opportunities to experience work environments. The student's transition goals stated that he would attend community college within one year of exiting high school.

The Agency held:

- The District created an appropriate transition plan and the student was not denied FAPE.
- The transition plan was adequate because it was developed with a teacher knowledgeable about the student, was updated when the student's goals changed, and addressed transition needs comprehensively.

Recent Agency Decisions (Con't.)

Los Angeles Unified Sch. Dist., 110 LRP 34448 (SEA CA 2010)

A student received transition services consisting of participation in a workforce development class, a postsecondary planning class, career planning, and independent living skills. The student also participated in instruction on obtaining employment and a resume-writing class. The School District did not conduct a formal transition assessment and did not develop a transition plan. The student filed a complaint and requested a formal assessment and transition plan.

The Agency held:

- The District committed a procedural violation by failing to conduct a transition assessment and failing to develop a transition plan for the student.
- Because the student still received adequate transition services and could not legitimately claim that she was deprived of the benefits of a formal postsecondary transition plan, the student was not denied FAPE.
- Procedural violations of the IDEA only warrant relief if there is evidence of educational harm or denial of FAPE.

Recent Agency Decisions (Con't.)

Brookings Harbor Sch. Dist., 110 LRP 68476 (SEA OR 2010)

A School District received complaints alleging that it failed to implement transition services described in the IEPs of nine students. Specifically, parents complained that the District cancelled an effective work training program without instituting a replacement, even though the children's IEPs contained requirements for work training in "authentic contexts."

The Agency held:

- Although the IDEA allows School Districts discretion in the methods used to provide FAPE and specific programs do not have to be mentioned in IEPs, this District failed to provide FAPE because the student's transition services were not consistent with the student's IEPs.

The District was ordered to conduct new IEP meetings specifically addressing transition services, and to provide compensatory educational services related to the students' transition goals. The District also had to provide student transportation and training for special education staff, case managers, and administrators.

Recent Agency Decisions (Con't.)

Tunkhannock Area Sch. Dist., 111 LRP 15804 (SEA PA 2011)

Parents of a high school student filed a complaint after their child began having problems in school, alleging that special education services were insufficiently preparing their child for college. Among other complaints, the parents said that the District violated IDEA requirements by including inadequate and inappropriate transition goals in the child's IEP and by failing to assure that one of the child's transition goals was met. The parents sought compensatory education and an evaluation.

The Agency held:

- Even though the student only applied to one postsecondary college instead of two, as listed in her IEP, this was, at most, a procedural violation.
- Despite not having complete compliance with her IEP, the student was not denied an educational benefit and did not endure any other substantive effect.
- Because parents could not show evidence of a substantial denial of FAPE, compensatory education was not awarded.

The Agency did order the District to pay for an independent evaluation of the student.

Recent Agency Decisions (Con't.)

District of Columbia Pub. Sch., 111 LRP 24961 (SEA DC 2011)

A student alleged that he was denied FAPE because his IEP failed to provide measurable transition and vocational goals. The transition plan did not identify specific fields of employment, did not indicate the student's preferences or interests, and did not take into account the student's extremely low functioning.

The Agency held:

- Postsecondary transition plans must identify specific fields of employment, indicate a student's preferences or interests, take into account a student's specific level of functioning, and be based on individual needs.
- The student's transition plan constituted a denial of FAPE.
- Compensatory education is an appropriate remedy under the IDEA and should generally aim to place children in the position they would have currently occupied but for the District's violation of the IDEA.

The District was ordered to provide compensatory education in the form of summer school, independent individual tutoring, and participation in a year round program.

Recent Agency Decisions (Con't.)

Salisbury Twp. Sch. Dist., 111 LRP 15361 (SEA PA 2011)

Parents argued that their child was not supplied with adequate transition planning because she was unsuccessful in postsecondary college and employment outcomes. The parents based their allegations in part on test results that indicated borderline functioning in math.

The Agency held:

- A denial of FAPE cannot be established by looking at outcomes.
- Congress did not intend the IDEA to guarantee any specific outcome, but rather to provide a basic, meaningful educational opportunity. Here, the District supplied necessary information as part of the transition, but cannot be liable if the parents or student do not seek additional supports post-transition.
- The appropriateness of an IEP and transition plan must be determined when the plan is established and not after the plan has been implemented.

Recent Agency Decisions (Con't.)

District of Columbia Pub. Sch., 111 LRP 26030 (SEA DC 2011)

A student claimed that his transition plan was insufficient because it did not address the feasibility of remaining on diploma track with limited earned credits, it only contained two goals, one of which was left to the parent to implement, and it did not contain any goals related to independent living skills. The transition plan was one page and contained a passing reference to the student's interest in "computer networking and mechanic training." The student's "Skills Inventory Assessment" was also left blank.

The Agency held:

- The student's transition plan was not reasonably calculated to provide meaningful education, and was therefore a denial of FAPE.
- Even though the student's transition plan was inadequate because it contained a blank skills assessment and was not individualized, compensatory relief was not warranted because the student was excessively truant.
- If a student is absent from school on most days, then a causal relationship between current educational deficits and the student's IEP cannot be shown as the basis for denial of FAPE.

Recent Agency Decisions (Con't.)

District of Columbia Pub. Sch., 111 LRP 26009 (SEA DC 2011)

A student's transition plan did not align with this vocational assessment and did not include services the student would need to secure work. His vocational assessment indicated he would need help identifying jobs, applying for them, and work readiness. The student's transition plan was created before his 16th birthday.

The Agency held:

- The transition plan was inappropriate because it lacked services to help train the student for work, including services focused on work readiness behavior, punctuality, and proper dress.
- The District did not violate the IDEA because the plan was created before the child's 16th birthday.

* The Agency's conclusion that the flawed plan was not a violation of the student's rights appears to conflict with OSERS guidance stating that if a district provides a transition plan before a child turns 16, then that plan must comply with IDEA transition requirements. The IHO's opinion was based on the Department of Education comments to IDEA regulations at 71 Fed. Reg. 46667.

Recent Agency Decisions (Con't.)

Philadelphia Sch. Dist., 111 LRP 34182 (SEA PA 2011)

A student's postsecondary transition plan only required that a student attend a fair and career options workshop. It did not address work, daily living, vocational assessment, or related services. No individualized objectives were included in the plans and the plan was derived from a generic computer program.

The Agency held:

- The student was denied FAPE because of an inadequate transition plan.
- The plan was a "transparent pretense of transitional planning," partially because the plan was derived from a computer program.

The District was ordered to provide compensatory education on a full day basis for a period of two years. Because the educational plans were egregiously inappropriate, the District was further ordered to provide a special reading program, occupational therapy evaluation, new IEP team meetings, and a new educational plan.

Recent Agency Decisions (Con't.)

District of Columbia Pub. Sch., 111 LRP 26012 (SEA DC 2011)

A foster child's guardian alleged that a School District denied the child FAPE because it did not conduct a vocational assessment and failed to develop age-appropriate transition plans. The plans were very general, did not include developmental courses addressing academic deficits, and did not address college preparation. The guardian sought review of the assessment, revision of the IEP, and compensatory education.

The Agency held:

- Appropriate transition plans were not completed because the District failed to use assessment instruments specifically designed to measure the student's unique abilities and level of functioning.
- The transition plan was also inappropriate because it was not reasonable, realistic, or attainable. For example, the plan stated an expectation for a career as a forensic scientist, yet the student was performing at a 5th grade level.
- The student's plan placed the burden of career planning on the student. An LEA cannot shift the burden of transition planning to a child.

The District was ordered to provide a vocational assessment and compensatory education in the form of an SAT course, independent tutoring, and career counseling.

Best Practices for Compliance

Best Practices for Compliance

1. **Follow the 9th Circuit standard for special education evaluations.** A procedural fault could rise to a level that constitutes a denial of FAPE if a district fails to conduct proper assessments and then provides inadequate services based on those faulty assessments. Without evaluative information in place, a school cannot develop an IEP that is reasonably calculated to provide a meaningful educational benefit. *N.B. v. Helgate Elementary Sch. Dist.*, 541 F.3d 1202 (9th Cir. 2008).
2. **Conduct appropriate transition assessments.** All assessments should be in compliance with the Arizona Monitoring Manual and NSTTAC Indicator 13 standards. Assessments should utilize experts when necessary, should be age-appropriate and individualized, and should avoid relying solely on computer-based forms. Examples of formal assessments include achievement tests, functional assessments, adaptive behavior scales, and interest inventories. Informal assessments may include data from teachers, parents, or employers.

Best Practices for Compliance (Con't.)

3. **Review and monitor transition plans continually.** Plans should maintain age-appropriateness and reflect a child's unique needs and changing aspirations. Plans should always contain results-oriented, measurable, and appropriate postsecondary goals.
4. **Assign a liaison to follow-up with involved parties.** Liaisons should speak with parents, family members, the student, educators, social workers, vocational educators, counselors, related services personnel, and any other involved agencies when assessing the child's progress and the adequacy of an IEP.
5. **Respond promptly to parents' concerns.** IEP meetings, although required annually, should happen more frequently if a parent has a concern with the transition plan. Evidence of parental involvement can protect districts from liability.
6. **Consider adjusting transition plan if progress toward transition goals is lacking.** Courts and other decision makers often consider whether meaningful progress has been made when determining whether to award compensatory relief.



Questions?